

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Bobby Barbee, et al., ) No. CIV 11-0109-PHX-DKD  
Plaintiffs, )  
vs. )  
Zurich American Insurance Company, )  
et al., )  
Defendants. )  
\_\_\_\_\_  
)

**ORDER DISMISSAL  
PURSUANT TO RULE 41(a)**

The Court having considered Plaintiffs Bobby Barbee and Linda Barbee and Defendant Zurich American Insurance Company’s (“Zurich”) Stipulation of Dismissal Pursuant to Federal Rule of Civil Procedure 41(a) filed on August 9, 2011 (Doc. 17),

**IT IS HEREBY ORDERED** that this action is dismissed in accordance with the following terms:

1. Linda Barbee’s claims against Zurich with respect to Bobby Barbee’s claim for a Permanent and Total Disability Benefit shall be dismissed with prejudice.

2. Bobby Barbee’s claims against Zurich shall be dismissed without prejudice.

3. If Bobby Barbee’s claim for a Permanent and Total Disability Benefit is not resolved through administrative proceedings, including exhaustion of all administrative remedies, Bobby Barbee may bring a civil suit in accordance with the employee welfare benefit plan at issue and the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1461, including the applicable limitations period. Such civil suit shall allege claims

1 under ERISA and shall not include preempted state law claims. Pursuant to the parties'  
2 stipulation and for purposes of such civil suit only, Kutak Rock LLP is authorized to accept  
3 service of summons and a copy of the complaint on behalf of Zurich.

4 DATED this 10<sup>th</sup> day of August, 2011.

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David K. Duncan  
United States Magistrate Judge